

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

RA No.279/2016 In
OA No.591/2009
with
RA No.290/2016 In
OA No.2981/2009

Order Reserved on: 06.03.2017
Order Pronounced on: 14.03.2017

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

RA No.279/2016

1. Union of India, through
Secretary, Railway Board
Ministry of Railways,
(Railway Board), Rail Bhavan,
Raisina Road, New Delhi-110 001.
2. Joint Secretary (G)
Ministry of Railways,
(Railway Board), Rail Bhavan,
Raisina Road, New Delhi-110 001. ...Applicants in
RA/Respondents in OA

(By Advocate: Shri R.N. Singh with Mr. Amit Sinha)

Versus

1. Shri N.K. Sharma
Then Joint Director (Vigilance),
Now working as Director/E(GP),
Ministry of Railways (Railway Board),
Rail Bhawan, Raisina Road, New Delhi-110001.
2. Shri Parvez,
Then Joint Director Finance (BC)-II
Now working as Director/E(GR),
Ministry of Railways (Railway Board)
Rail Bhawan, Raisina Road, New Delhi-110001.
3. Shri S. Kameshwar,

Then Under Secretary,
 Now Joint Director (Retired),
 R/o 275- Laxmi Bai Nagar, New Delhi-110 023.

4. Smt. Vaidehi Gopal,
 Then Dy. Director (on deputation),
 Now Joint Director (Retired),
 804, Elephanta Heights,
 Plot No.41, Sector 10, Dwarka,
 New Delhi-110075.
5. Shri Prabir Roy,
 Working as Dy. Director,
 Ministry of Railways (Railway Board),
 Rail Bhawan, Raisina Road, New Delhi-110001.

-Respondents
 (Applicants in O.A.)

6. The Chairman,
 UPSC,
 Dholpur House, Shahjehan Road
 New Delhi 110 001.

-Respondent
 (Respondent no.3 in OA)

7. Shri Sunil Kumar
 Then Deputy Secretary,
 Now working as Director/E(W)&(D&A),
 Rail Bhavan,
 New Delhi.
8. Shri M.S. Mehra
 Then Joint Secretary,
 Now Adviser (Retired),
 C-101, Upkar Apartments,
 Plot No.9, Sector 12, Dwarka,
 New Delhi.
9. Shri Shiv Dan Singh
 Then Ex. Director (on training)
 Now working as JS(E),
 Ministry of Railways,
 Railway Board, Rail Bhavan,
 New Delhi.
10. Shri B. Majumdar
 Then Director (on training)

Now working as JS(E),
 Ministry of Railways,
 Railway Board, Rail Bhavan,
 New Delhi.

11. Shri H. Moharana
 Then Joint Director (Training),
 Now working as Director/Vigilance(I),
 Ministry of Railways,
 Railway Board, Rail Bhavan,
 New Delhi.
12. Shri S.K. Aggarwal
 Then Deputy Secretary E(O) I,
 Now working as Director/E(O)I,
 Ministry of Railways,
 Railway Board, Rail Bhavan,
 New Delhi.
13. Shri Sudhir Kumar
 Then Deputy Director (on deputation),
 Now working as US (Protocol),
 Ministry of Railways,
 Railway Board, Rail Bhavan,
 New Delhi.
14. Shri T. Srinivas
 Then Section Officer/Track III,
 Now working as Deputy Director/Track-III,
 Ministry of Railways,
 Railway Board, Rail Bhavan,
 New Delhi.
15. Mr. G. Priya Sudarsini
 Then Deputy Director,
 Now working as Deputy Secretary (on training),
 Quarter No.117, Type-III,
 Sector-1, Sadiq Nagar,
 New Delhi.
16. Shri Manoj Kumar
 Under Secretary
 Ministry of Railways,
 Railway Board, Rail Bhavan,
 New Delhi. Respondents
 (Respondents 4 to 13 in OA)

(By Advocates: Shri Abhay N. Dass and Mr. N.K. Bhatnagar for R-1 to R-5, Mr. R.V. Sinha for R-6, Mr Sunil Kumar for R-7 and Mr. Sanjeev Kumar for R-8 to R-13)

RA No.290/2016

1. Union of India, through
The Chairman,
Railway Board, Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110 001.
2. The Member (Staff), Railway Board
Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110 001.
3. The Secretary, Railway Board
Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110 001. ..Applicants in RA/
Respondents No.1 to 3 in OA

(By Advocate: Shri R.N. Singh)

Versus

1. Shri Manoj Kumar
Under Secretary [E(O)-II]
Railway Board, Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110001.
2. Shri Sunil Kumar
Then Deputy Secretary (D&A),
Now working as Director/E(W)D&A,
Railway Board, Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110001.
3. Shri B. Majumdar
Then Director (Estt./G),
Railway Board,
Now working as JS(E)-II,

Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110001.

4. Shri H. Moharana
Then Joint Director (Training) Railway Board,
Now working as Director/Vigilance(I),
Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110001.

5. Shri S.K. Aggarwal
Then Deputy Secretary [E(O)-I]
Now working as Director/E(O)I,
Railway Board, Ministry of Railways,
Rail Bhavan, Raisina Road,
New Delhi-110001.

6. Shri Sudhir Kumar
Then Deputy Director (on deputation),
Now working as US (Protocol),
Ministry of Railways,
Rail Bhavan, Railway Board,
New Delhi-110001.

7. Shri T. Srinivas
Then Section Officer Track-III,
Now working as Director [Track III],
Ministry of Railways, Railway Board,
Rail Bhavan,
New Delhi-110001. (Respondents)/Applicants
in OA

8. The Union Public Service Commission,
Through The Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110001. ...Respondent
(Respondent No.4 in OA)

9. Shri N.K. Sharma
Then Joint Director [Vigilance],
Now working as Director/E(GP),
Ministry of Railways (Railway Board),
Rail Bhawan, Raisina Road,

New Delhi-110001
 R/o 9/715, Lodi Colony,
 New Delhi-110003.

10. Shri Parvez,
 Then Joint Director [Finance (BC)-II],
 Now working as Director/E(GR),
 Ministry of Railways (Railway Board),
 Rail Bhawan, Raisina Road,
 New Delhi-110001
 R/o A-31, Pandara Road,
 New Delhi-110003.
11. Shri S. Kameshwar,
 Then Under Secretary,
 Now working as Joint Director (Retired),
 R/o 275-Laxmi Bai Nagar,
 New Delhi-110023.
12. Smt. Vaidehi Gopal,
 Then Deputy Director (On deputation),
 Now working as Joint Director (Retired),
 804, Elephanta Heights,
 Plot no.41, Sector-10, Dwarka,
 New Delhi-110075.
13. Shri Prabir Roy,
 Working as Deputy Director,
 Ministry of Railways (Railway Board),,
 Rail Bhawan, Raisina Road,
 New Delhi-110001.Respondents
 (Respondents No.5 to 9 in OA)

(By Advocates: Shri Sanjeev Kumar for R.1 to R.7, Mr. R.V. Sinha for R.8 and Mr. Abhay N. Das and Mr. N.K. Bhatnagar for R.9 to R.13)

O R D E R

Mr. P.K. Basu, Member (A):

RA 279/2016 and RA 290/2016 have been heard together and disposed of by this common order as they arise out of the same order in OA No.591/2009 and OA No.2981/2009 dated 31.05.2016.

2. There was a long pending dispute between promotee and direct recruit Section Officers (SOs) in the Railways which was sought to be resolved finally vide order dated 31.05.2016.

3. These Review Applications (RAs) have been filed by the Railways on 24.11.2016, which indeed is beyond the limitation period of one month. Therefore, the first ground raised by the Review Respondent is that of limitation.

4. In the RAs, the review applicants have stated that the Ministry of Railways wanted to implement the order dated 31.05.2016 but they ran into several difficulties when the issue was examined in detail and, therefore, they have chosen to file these RAs to seek permission of this Tribunal in framing a revised seniority list of SOs in slight deviation to the guidelines set by this Tribunal in its order dated 31.05.2016.

5. We appreciate that the order dated 31.05.2016 results into the respondent-Railways undertaking an elaborate exercise as past seniorities have to be changed including all those who have been promoted on the basis of earlier seniority and this would necessarily take some time. It seems that when the Railways actually went ahead to implement the Tribunal's order, they faced some practical difficulties and, therefore, thought it proper to approach this Tribunal through these RAs to seek certain deviations in the directions contained in the order dated 31.05.2016. In this background, we do not think that insisting on limitation would serve any purpose rather it would only lead to delay in

resolution of the matter even further. Needless to say, this has been going on for years together. We, therefore, condone the delay.

6. This Tribunal in its order dated 31.05.2016 had discussed all the aspects relating to this issue and finally gave the following directions:-

“182. With these directions, these two connected OAs are disposed of, and the impugned Memorandum dated 22.12.2008 issued by the Secretary Railway Board, is set aside, and he is directed to issue fresh year-wise Seniority Lists of Section Officers from 1970 onwards, taking into account the above principles. The Respondent No.1 is, therefore, directed to re-cast the entire year-wise Seniority Lists of the RBSS at the level of Section Officers, from the very beginning of the RBSS as a Service, on the basis of principles as have been explained above, which may again be summarised as below:-

“i) The latin maxims *fiat justitia et pereat mundus* or *fiat justitia ruat caelum*, commonly ascribed to Ferdinand I, Holy Roman Emperor, and roughly meaning **“let there be justice, though the world perish”**, or **“let justice be done, though the heavens fall”** would apply, and, justice must be done, regardless of the result otherwise, and the law of the land shall be applied, and the plea of the official respondents that there would be chaos or mayhem, if the practice and system of assigning *inter-se* seniority of SOs as had been adopted by them is ordered to be changed is rejected outright. Let chaos and mayhem prevail once, so that *inter-se* seniority of the respective sides are fixed in a legal manner, once and for all, and in future also.

ii) Each and every person can claim seniority in the cadre of Section Officers only from the date of his substantive appointment in that cadre, irrespective of the year during which the vacancy which he came to substantively occupy had arisen earlier;

iii) This proposition would apply to all categories of Section Officers, whether they were Direct Recruits nominated by UPSC, or Departmental Promotees, through any of the routes of (i) seniority-cum-merit-based promotion after 8 years’ of continuous service, or (ii) accelerated promotion through LDCE route,

after completion of 4 years' of service as Assistants, or (iii) through promotion of the Stenographers in respect of the two earmarked vacancies, which continued to be so earmarked till the promulgation of the RBSS Amendment Rules of 2004;

iv) No weightage whatsoever can be, or shall be given to anybody in respect of any In-charge, or ad hoc, or officiating basis appointment as Section Officers, even if he had been included in the Select List of SOs by the DPC already, before his assuming charge as such, or had qualified for accelerated promotion being granted to him through the LDCE route, before his assuming charge as such, until such a person comes to substantively occupy the post of SO either in the regular DP quota, or the DR quota transferred to the DP mode after having remained unfilled for two years.

v) The seniority in the cadre of Section Officers at level-3 of RBSS so determined, in the manner as indicated above, shall alone be taken into consideration of further promotions to level-2 and level-1 of RBSS thereafter.

vi) The Respondent No.1 shall, after finalization of the SOs' level Seniority List, convene DPCs or Review DPCs, for considering year-wise further promotions of all the incumbent SOs in that seniority list as Under Secretaries and Deputy Secretaries etc., and so on.

183. However, it is further made clear that after undertaking such proper promotions, if any individual is found to have already enjoyed higher emoluments fortuitously in the meanwhile, in view of his having been wrongly so promoted to the promotional posts concerned earlier than when it actually became due to him, as per law, and as per the Review DPCs etc., no recoveries in respect of the excess salary and emoluments, paid already to him in such promotional posts, due to erroneous promotions having been granted earlier to any individual incumbent, before they became due to such individual, no recoveries of any amounts already disbursed due to the fault of the official respondents shall be effected".

7. It would be seen from the order that the respondents at that stage also had raised the following points, which were considered and rejected by the Tribunal:-

- (i) That records are not available particularly of direct recruits between 1970-1973;
- (ii) Concept of confirmation against a substantive post for promotion quota - Select List of SOs was used to be prepared by utilizing both temporary as well as permanent vacancies and SOs figuring in the said Select List were later confirmed one by one as and when the substantive vacancies of SOs became available in the cadre;
- (iii) Deemed confirmation with effect from 1989 of promotee officers who were waiting for their confirmation for want of a permanent post;
- (iv) Failure of Rota-Quota; and
- (v) Reopening of the issue will lead to complete administrative mayhem.

8. In the RAs we find that the same issues have again been raised as ground for inability to implement the order of the Tribunal.

9. In fact, in the order dated 31.05.2016, the Tribunal had specifically referred to latin maxims meaning “let there be justice, though the world perish”, or “let justice be done, though the heavens fall”. In fact, the Tribunal observed “let chaos and mayhem prevail once, so that *inter-se*

seniority of the respective sides are fixed in a legal manner, once and for all, and in future also”.

10. We, therefore, find that there is no ground for the review applicants to file these RAs. In fact, the review applicants themselves concede that review has not been filed because there is any error apparent on the face of the record but has been filed under the provisions of Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987, which reads as follows:-

“24. Order and directions in certain cases - The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice”.

Further it has been filed under the provisions of Order XLVII Rules 1 and 2 of CPC, which read as follows:-

“1. Application for review of judgment.-(1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(C) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may

apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation : The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment”.

11. Learned counsel for the review applicants specifically drew our attention to the phrase in Order XLVII Rule 1 (c) i.e. “for any other sufficient reason” and stated that these RAs would come under this specific clause.

12. We have heard the learned counsels on behalf of the review applicants as well as review respondents in both the cases.

13. As stated by the learned counsel for the review applicants, they have approached this Tribunal through these RAs holding that “for any other sufficient reason” here would mean the difficulties of the respondents to implement the decision for various reasons. As we have seen, those various reasons have been raised earlier also by the respondents at the stage the OAs were being heard, which were rejected by the Tribunal in its order dated 31.05.2016.

14. We fail to understand that while there were tentative seniority lists based on which promotions were given and the date of joining of both departmental promotees and direct recruits is available in their records, why there should be any difficulty on the part of the respondents to

revise the seniority list. So, it appears, that these RAs are an attempt to gain time. Once all the objections raised by the Railways have been considered and final orders passed, review cannot be maintainable on the same grounds that were raised at the stage of decision in the OAs. No doubt, it will be a daunting task to implement the order but it has to be done. Already 10 months have passed without the department even having started the exercise of preparing the revised seniority list.

15. In the above background, we dismiss these RAs with a direction to the review applicants to immediately start the process of implementation of the order and preparation of the revised seniority list and implement the order dated 31.05.2016. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

/dkm/